

ITEM NO. 19

June 29, 2007

ERRATA SHEET

CHANGES TO ORDER NO. R8-2007-0051

Affirming Administrative Civil Liability Complaint No. R8-2007-0023
for
Die Cast Manufacturing Co.

(Language deleted is ~~strike-through~~)

(Language added is **bold and shaded**)

1. Add a new finding to Order No. R8-2007-0051, as follows:

7. **Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the following table.**

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	Die Cast did not submit its annual report in a timely manner and the accuracy of the report it submitted is questionable. The 2005-06 annual report indicates that it collected one storm water sample (Section E.2), whereas the section on Sampling & Analysis Results shows that no samples were collected, because there was no rain.
B. Culpability	Die Cast failed to submit its annual report as required by the General Permit. Die Cast received two certified letters and a number of phone calls reminding it that the annual report was overdue and warning it of the consequences.
C. Economic Benefit or Savings	Staff estimates that Die Cast saved approximately \$1,000 during the 2005-2006 reporting year by not collecting and analyzing storm water samples; its savings on delaying the submittal of the annual report itself is negligible.
D. Prior History of Violations	During the last seven reporting years, Die Cast submitted the annual report by the due date only once. At least six notices of Non-Compliance were issued to Die Cast for late submittal of the annual reports.

E. Other Factors	Board staff spent at least 3 hours of staff time in its efforts to bring this facility into compliance (@\$70.00 per hour, the total cost for staff time is \$210).
F. Ability to pay	Die Cast has not provided any information to indicate that it is unable to pay the proposed assessment.

2. In Order No. R8-2007-0051, renumber existing Finding No. 7 to No. 8.

3. Add a new finding to Order No. R8-2007-0051, as follows:

9. After consideration of these factors, the Board finds that civil liability shall be imposed on Die Cast in the amount of \$5,000 (of this amount \$1,000 represents the mandatory minimum penalty per Water Code Section 13399.33(c)) for the violations cited above.

4. On page 2 of Order No. R8-2007-0051, modify Item No. 1 as follows:

1. Die Cast shall pay the entire amount of \$5,000 to the State Water Resources Control Board **Waste Discharge Permit Fund** by July 30, 2007.

State of California
California Regional Water Quality Control Board
Santa Ana Region

June 29, 2007

ITEM: 19

SUBJECT: Order No. R8-2007-0051 Affirming Administrative Civil Liability Complaint No. R8-2007-0023, WDID NO. 8 36I008011, Die Cast Manufacturing Co. (Die Cast), Bloomington, San Bernardino County

BACKGROUND

On May 16, 2007, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2007-0023 (copy attached) to Die Cast for alleged violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). In the ACL, the Executive Officer proposed an assessment of \$5,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Die Cast.

ACL No. R8-2007-0023 was issued by the Executive Officer to Die Cast for violations of the General Permit, including the failure of Die Cast to submit the 2005-2006 annual report by the July 3, 2006 deadline.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board.

On May 22, 1997, Die Cast filed a NOI and obtained coverage under the General Permit, WDID No. 8 36I008011. The General Permit requires submittal of an annual report by July 1 of each year. Die Cast did not submit the annual report by the July 3, 2006 deadline (July 1, 2006 was a Saturday). Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Die Cast. The first NNC was mailed on August 4, 2006, received by the facility on August 28, 2006. The second NNC was issued on September 11, 2006, again by certified mail. The facility received the second NNC on September 13, 2006.

In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 3 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 11, 2006.

In addition, Board staff left messages for Mr. Dave Muench on September 8, 2006, November 13, 2006 and November 22, 2006 to remind him of the requirement to submit the annual report. On December 12, 2006 Board staff spoke to a facility representative who indicated that the annual report would be faxed or mailed to the Board office by the last week of December 2006.

On January 4, 2007, a copy of the annual report was faxed to the Board office. The submittal included neither an explanation for the late submittal, nor any measures to insure timely submittal of the reports in the future. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 3, 2006.

Die Cast failed to submit the required annual report to the Regional Board office within 60 days from the date on which the original NNC was sent. Under those circumstances, California Water Code Section 13399.33(c) requires that an administrative civil liability shall be imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000). In addition, Water Code Section 13385(c) provides that administrative civil liability may be imposed on any person who violates waste discharge requirements in an amount not to exceed \$10,000 per day of violation.

Based on non-submittal of the 2005-2006 annual report, the facility is alleged to have violated the General Permit for 184 days (from July 4, 2006 to January 3, 2007). The maximum liability for this violation is \$1,840,000.

A review of Die Cast's permit compliance history reveals that the facility submitted the annual report by the due date only once in the last seven reporting years. A detailed discussion of the factors under Section 13385(e) is included in Complaint No. R8-2007-0023 (attached). After consideration of these factors, including the history of violations, the Executive Officer proposed that civil liability be imposed on Die Cast in the amount of \$5,000.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions

throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment of \$5,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on May 16, 2007, by adopting Order No. R8-2007-0051.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2007-0051
)	for
Die Cast Manufacturing Co.)	Administrative Civil Liability
2212 S. Vista Avenue)	
Bloomington, CA 92316)	
)	
<u>Attention: Mr. Dave Muench</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on June 29, 2007 to receive testimony and take evidence concerning the allegations contained in Complaint No. R8-2007-0023, dated May 16, 2007, and concerning the recommendation for the imposition of administrative civil liability pursuant to California Water Code sections 13385 and 13399.33 in the amount of \$ 5,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Die Cast Manufacturing Co. (Die Cast) is authorized to discharge storm water under the Permit, WDID 8 361008011. The Permit requires Die Cast to submit an annual report by July 1 of each year. Die Cast did not submit the annual report by July 3, 2006 (July 1, 2007 was a Saturday). Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Die Cast. The first NNC was mailed on August 4, 2006 and received on August 28, 2006. A second NNC was issued on September 11, 2006, again by certified mail. The facility received the second NNC on September 13, 2006.
2. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 3 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 11, 2006.
3. In addition, Board staff left messages for Mr. Dave Muench on September 8, 2006, November 13, 2006 and November 22, 2006 to remind him of the requirement to submit the annual report. On December 12, 2006, Board staff spoke to a facility representative who indicated that the annual report would be faxed or mailed to the Board office by the last week of December 2006.

4. On January 4, 2007, a copy of the annual report was faxed to the Board office. The submittal included neither an explanation for the late submittal, nor any measures to insure timely submittal of the reports in the future. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 3, 2006.
5. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000), and Section 13385 allows the Board to assess additional penalties for violations of Waste Discharge Requirements. During the last seven years, Die Cast has submitted the annual report on time only one time. The Board has considered the history of violations and other factors as discussed in the Complaint.
6. On May 16, 2007, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2007-0023 to Die Cast, proposing that the Board impose civil liability in the amount of \$5,000 on Die Cast for the violations cited above.
7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Die Cast, in the amount of \$5,000 as proposed in Complaint No. R8-2007-0023 for the violations cited, payable as set forth below.

1. Die Cast shall pay the entire amount of \$5,000 to the State Water Resources Control Board by July 30, 2007.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on June 29, 2007.

Gerard J. Thibeault
Executive Officer



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

May 16, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dave Muench,
Die Cast Manufacturing Co.
2212 S. Vista Avenue
Bloomington, CA 92316

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2007-0023

Dear Mr. Muench:

We are enclosing a certified copy of Complaint No. R8-2007-0023, proposing administrative civil liability of \$5,000 for violations of the California Water Code and the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001. The assessment includes a civil liability of \$4,000 and a mandatory penalty of \$1,000 for failure to submit the annual report in a timely manner.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on June 29, 2007. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for \$5,000. The check should be made payable to the State Water Resources Control Board. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to May 29, 2007.

California Environmental Protection Agency



Recycled Paper


May 16, 2007

At that time, you may submit information that may not have been previously available to staff regarding this matter. This information should address the following:

1. Nature, circumstances, extent and gravity of violation;
2. Your ability to pay the proposed assessment;
3. Your degree of culpability;
4. Any prior history of violations;
5. Economic benefit or savings; and,
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Milasol C. Gaslan at (951) 782-4419. All legal questions should be referred to our legal counsel, Erik Spiess, at (916) 341-5167.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2007-0023, Waiver Form and envelope

Cc via email only:

Mr. Bruce Fujimoto, State Water Resources Control Board, Div. of Water Quality
Mr. Erik Spiess, State Water Resources Control Board, Office of Chief Counsel
Ms. Kathi Moore, U.S. Environmental Protection Agency, Region 9 (WTR-7)
Mr. Dan Ilkay, County of San Bernardino, Storm Water Program, NPDES
Coordinator



STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:

Die Cast Manufacturing Co.
2212 S. Vista Avenue
Bloomington, CA 92316

Attention: Mr. Dave Muench

Complaint No. R8-2007-0023
for
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on June 29, 2007 at the City Council Chambers, 25541 Barton Road, Loma Linda, CA 92354. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Die Cast Manufacturing Co. (Die Cast), 2212 S. Vista Avenue, Bloomington, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8 36I008011. The General Permit requires submittal of annual report by July 1 of each year.
5. The 2005-2006 annual report, which was due on July 3, 2006, as July 1 was a Saturday, was not received from Die Cast. A Notice of Non-Compliance (NNC) was issued to Die Cast, by certified mail, on August 4, 2006. The return receipt showed it was received by the facility on August 28, 2006. When Board staff received no response to the first NNC, a second NNC was issued on September 11, 2006, again by certified mail, and was received by the facility on September 13, 2006. In

both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 11, 2006.

6. Board staff left messages for Mr. Dave Muench on September 8, 2006, November 13, 2006 and November 22, 2006 to remind him of the requirement to submit the annual report. On December 12, 2006 Board staff spoke to a facility representative who indicated that the annual report would be faxed or mailed to the Board office by the last week of December 2006.
7. On January 4, 2007, a copy of the annual report was faxed to the Board office. The submittal included neither an explanation for the late submittal, nor any measures to insure timely submittal of the reports in the future.
8. The facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 3, 2006.
9. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
10. Based on non-submittal of the 2005-2006 annual report, the facility is alleged to have violated the General Permit for 184 days (from July 4, 2006 to January 3, 2007). The maximum liability for this violation is \$1,840,000.
11. Section 13399.33(c) of the California Water Code requires that the Board impose a mandatory minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
12. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the following table.

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	Die Cast did not submit its annual report in a timely manner and the accuracy of the report it submitted is questionable. The 2005-06 annual report indicates that it collected one storm water sample (Section E.2), whereas the section on Sampling & Analysis Results shows that no samples were collected, because there was no rain.
B. Culpability	Die Cast failed to submit its annual report as required by the General Permit. Die Cast received two certified letters and a number of phone calls reminding it that the annual report was overdue and warning it of the consequences.
C. Economic Benefit or Savings	Staff estimates that Die Cast saved approximately \$1,000 during the 2005-2006 reporting year by not collecting and analyzing storm water samples; its savings on delaying the submittal of the annual report itself is negligible.
D. Prior History of Violations	During the last seven reporting years, Die Cast submitted the annual report by the due date only once. At least six notices of Non-Compliance were issued to Die Cast for late submittal of the annual reports.
E. Other Factors	Board staff spent at least 3 hours of staff time in its efforts to bring this facility into compliance (@\$70.00 per hour, the total cost for staff time is \$210).
F. Ability to pay	Die Cast has not provided any information to indicate that it is unable to pay the proposed assessment.


13. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Die Cast in the amount of \$5,000 (of this amount \$1,000 represents the mandatory minimum penalty per Water Code Section 13399.33(c)) for the violations cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board for \$5,000. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions, please contact Milasol C. Gaslan at (951) 782-4419, or contact the Board's legal counsel, Erik Spless, at (916) 341-5167.

May 16, 2007
Date



Gerard J. Thibeault
Executive Officer

Atten: Dave Muench

for Die Cast Manufacturing Co.